



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

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August 12, 1953

Hon. Robert S. Calvert
Comptroller of Public Accounts
Capitol Station
Austin, Texas

Letter Opinion No. MS-82

Re: Authority of the Comptroller to issue warrants against the General Fund to refund accumulated contributions under the Judicial Retirement Act.

Dear Mr. Calvert:

Your request for an opinion reads as follows:

"The general appropriation bill of the 53rd Legislature contains this provision:

"'Sec. 2. Out of the fund created by the retirement contributions of the Judges under Section 5 of Chapter 99 (H. B. No. 33), Acts of the 51st Legislature, Regular Session, there is hereby appropriated not to exceed Five Thousand Dollars (\$5,000) for each year of the biennium beginning September 1, 1953, or as much thereof as may be necessary to refund accumulated contributions as provided in Section 6 of the Act.' (Art. I, Ch. 81, Acts 53rd Leg., 1953, at p. 139.)

"I direct your attention to the fact that the refund is to be from 'the fund created by the retirement contributions.' Under the Judicial Retirement Act all contributions by the Judges go into the general fund, and there is no separate fund created by these contributions. Will you please advise me whether, in your opinion, I would be authorized to issue any warrants under this provision, and, if so, whether same should be issued against the general fund.

"In the event your answer should be that I am authorized to issue warrants against the general fund, I desire further instruction. Judging by past experience it appears that \$5,000.00 will be insufficient to meet the claims

which will arise during either of the fiscal years. It seems to me that I must pursue one of the following courses: Either withhold all payments until the end of the fiscal year, and, should the claims exceed \$5,000.00, prorate that sum among the different claimants, or pay the claims in full so long as the fund holds out, leaving nothing for claims filed after the fund is exhausted. Will you please advise me the correct course to pursue?"

The retirement contributions of judges are accumulated by deduction of a percentage of their monthly salaries, which are paid from the General Revenue Fund, and the amounts deducted remain in the General Fund. Sec. 5, Ch. 99, Acts 51st Leg., R.S., 1949, codified as Art. 6228b, Sec. 5, Vernon's Civil Statutes. While there is no separate fund "created" by these contributions, the deductions represent a definite sum of money which remains in the General Fund instead of being paid out as salaries, and the General Fund receives the benefit of these deductions. Beyond question, the purpose of the provision in the appropriation act, quoted above, is to appropriate money for the refunding of contributions as required in Section 6 of Article 6228b. In providing the money for refund of the contributions, it was necessary for the Legislature to specify the fund from which the appropriation was being made. We think the intention of the Legislature was to state that the accumulated contributions were to be paid from the fund which had been benefited by the retention of the monthly deductions, i.e., the General Fund. We are of the opinion that you are authorized to issue warrants against the General Fund to make these payments.

Your second question is based upon the speculation, founded on past experience, that the amount appropriated for each fiscal year will not be sufficient to pay all the claims which will arise during the year. We do not know of any rule or policy which would authorize you to withhold all payments until the end of the fiscal year and prorate the payments in the event the claims exceed \$5000. Each claim is fully matured when it is presented for payment, and we are of the opinion that the claimant is entitled to immediate payment in full so long as funds are ~~available~~ ^{available} for payment. We think the rights of these claimants are the same as those of other persons whose claims must be satisfied from legislative appropriations - they have a right to present their claims for payment as soon as they mature and to receive immediate full payment if funds are available.

Article 4357, Vernon's Civil Statutes, reads in part:

"When claims and accounts are received by the Comptroller's office⁷, it shall be ascertained if

there are funds available therefor; and the person making the examination shall indicate such fact by marking his initials upon such claim; and if there are no funds available, that fact shall be written or stamped upon such claim; and the same shall be held to await the authority to issue a proper warrant therefor. . . ."

Article 4349 sets out the procedure to be followed where the appropriation for paying special claims has been exhausted. Article 4386 states that warrants shall be numbered "in the order of receiving the accounts in the Comptroller's office," and in the event of a question and necessity arising as to the priority of payment, they shall be paid in the order of their serial number. We believe the proper inference to be drawn from these statutes is that a warrant should be issued forthwith in payment of a claim "if there are funds available therefor."

In answer to your second question, it is our opinion that claims for refund of accumulated contributions should be paid in full in the order in which they are received until the appropriation is exhausted.

Yours very truly,

JOHN BEN SHEPPERD
Attorney General

By

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Assistant

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